IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1681 OF 1994

Mrs.Rupa Ramesh Phatak,)
Indian Inhabitant, residing)
at Flat No.2, Sudhama, 17, D.D.)
Nagar, Linking Road Extn.,)
Santacruz (West),)
Bombay-400 054.) ..PETITIONER.

Versus

1. The Secretary,)
Deccan Education Society,)
registered under the)
Societies Registration)
Act, 1980 and Bombay Public)
Trust Act, 1961, having)
office at Kirti M.)
Dongarsee College, Dadar(W),)
Bombay-400 028.)

2. The Principal,)
Kirti M. Doongersee)
College, both having)
their office at Dadar,)
Bombay - 400 028.)

3. University of Bombay,)
Fort, Bombay.)

4. The State of Maharashtra,)
through its Department of)
Education and Employment,)
Mantralaya Annexe,)
Bombay - 400 032.) ..RESPONDENTS.

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Mr.Mihir Desai, Advocate for the Petitioner.
Ms.Calcuttawala, A.G.P., for the State.
Mr.S.M.Dharap, Advocate for Respondent No.2.

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CORAM : **DR.S.RADHAKRISHNAN AND SMT.V.K.TAHILRAMANI,JJ.**

DATED : **NOVEMBER 14, 2006.**

JUDGMENT: (PER SMT.V.K.TAHILRAMANI,J.)

1. In this Petition, the petitioner is praying for directions in the nature of *certiorari* so as to quash and set aside the advertisement dated 13.6.1994 issued by the respondent-Management and the Government Resolution dated 12.7.1989.

2. The petitioner came to be appointed as a Lecturer in Zoology in the college of respondent No.1 initially on temporary basis from 27.6.1988 to 26.7.1988, however, since August, 1988 she was appointed against a permanent vacancy which was however for a reserved post and she was continued till the end of that academic year. Subsequently she came to be appointed for the following periods on temporary basis and every time her appointment was approved by the respondent-University. She was appointed from 1.8.1989 to 20.4.1990, 2.7.1990 to 20.4.1991, 1.8.1991 to 20.4.1992, 3.8.1992 to 20.4.1993 and 21.6.1993 to 20.4.1994. All these

appointments were against the reserved post for Scheduled Caste. In the academic year 1993-1994 a duly qualified reserved category candidate was selected by the Selection Committee on 11.7.1993. However, a fresh appointment order came to be issued in favour of the petitioner for the period from 12.7.1993 to 20.4.1994 as there was increase in the workload, hence the petitioner was continued in service for that academic year. In the academic year 1994-1995 due to reduction of workload there was no vacancy available for the reappointment of the petitioner. But, one person was promoted to the post of Principal, and the post occupied by him fell vacant. The person who was to occupy that post had proceeded on long leave by keeping lien on his post. Therefore, for that year as well, the petitioner came to be appointed against the leave vacancy.

3. On 13.6.1994 the respondent-Management issued an advertisement for 14 posts of Lecturers and all these posts were reserved for SC/ST/DT/NT or OBC candidates. So far as the subject of Zoology is concerned, two posts were sought to be

filled-in one from SC/ST/DT/NT; and other one from OBC category but on leave vacancy.

4. While challenging the said advertisement, it has been contended by the petitioner that in respect of the subject of Zoology there were seven posts and three of them were already occupied by reserved category candidates. It is the contention of the petitioner that by reserving one more post for SC/ST/DT/NT in the impugned advertisement, the total number of Lecturers in the reserved category would go to four as against the total strength of seven. In such case, the reserved quota of 50%, as mandated by law, would be exceeded.

5. While admitting this Petition on 3.8.1994, this Court directed that the petitioner shall not be substituted by any one selected in the post of Lecturer in Zoology in pursuance of the impugned advertisement. Consequently, the petitioner continued in service during the last more than fourteen years, which fact is not disputed.

6. The respondent-Management in its reply, while opposing the Petition relied upon the Government Resolution dated 12.7.1989 so as to submit that de-reservation of a post on account of non-availability of the reserved category candidates for a continuous period of three years or more is not automatic and, therefore, there was no vested right in favour of the petitioner for being confirmed against a reserved vacancy. The fact remains that on account of a Lecturer from Zoology having been appointed as the Principal, an additional vacancy was available for the petitioner as the said Lecturer was confirmed in the post of Principal in August, 1995. The petitioner has been continued in the said vacancy which is a permanent post all these years. Moreover, the petitioner has not blocked any reserved category post as per the reservation roster.

7. It is pertinent to note that the University has not filed any reply so as to contest the claim of the petitioner. That the petitioner is qualified and has a good service record is not

denied. In addition to this, during the oral arguments the learned counsel for the respondent-Management fairly conceded that the petitioner has been working against a regular vacancy during the pendency of this Petition. In an unreported decision of this Court dated 5.4.2004 passed in W.P.(Ldg.) No.3246 of 2003 (**Reddy Baini Damodar Vs. J.M.Patel College of Commerece and Ors**.), a similarly situated Lecturer's case was considered by this Court. In the said case the petitioner Lecturer had worked for 13 years against a reserved post and inspite of the advertisement being released the Management could not appoint a candidate belonging to backward class. By relying upon an earlier decision of this Court in the case of **Kakoti Shyamlal Sircer Vs. Nagpur University & Ors.** reported in **2002 (2) Mah.L.J.673**, this Court directed the State Government to de-reserve the post and regularise the services of the petitioner. The petitioner before us has a better case inasmuch as during the pendency of this Petition, she has been continuously working for more than 13 years against a regular post and it

is not the case of the University or the College that the said post is for reserved category.

8. Under these circumstances without considering the petitioner's challenge to the impugned advertisement as well as the Government Resolution dated 12.7.1989, we are of the opinion that the petitioner is required to be regularised in service at least from August, 1995. The G.R. dated 12.7.1989 has been amended/revised from time to time and hence we need not consider the petitioner's challenge to the same at this stage.

9. In the result, the Petition is allowed and the petitioner is directed to be regularised as Lecturer in Zoology from August, 1995. Needless to say that her pay-scale etc. as a permanent Lecturer shall be given as per the Rules prescribed by the University Grant Commission and followed by the State of Maharashtra. Rule made absolute accordingly. No order as to costs.

[DR.S.RADHAKRISHNAN,J.]

[SMT.V.K.TAHILRAMANI,J.]